SUPREME COURT, U.S.
FILED
APR 14 1995
OFFICE OF THE CLERK

No. 94-1378

IN THE
Supreme Court of the United States
OCTOBER TERM, 1994

JOHNSON CONTROLS, INC., SYSTEMS AND SERVICES DIVISION, and PNEUMATIC CONTROL SYSTEMS COUNCIL,
Petitioners,
v.
UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO, and its LOCAL 353,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the petition should be denied because the questions posed therein are not presented either by the facts of the case or by the decision below.

2. Whether an arbitrator is precluded from interpreting a patently ambiguous contract term by an alleged lack of "meeting of the minds" over the term's meaning.

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BRIEF IN OPPOSITION

OPINIONS BELOW AND JURISDICTION

The decisions below, the basis for the Court's jurisdiction and the statutory provisions involved are properly set out in the petition for a writ of certiorari in this case. Pet. 1 to 2.

COUNTERSTATEMENT OF THE CASE

A. Petitioner Johnson Controls, Inc., through the Pneumatic Control Systems Council, and Respondent United Association are party to a collective bargaining

agreement with a grievance procedure culminating in binding arbitration. Pet. App. A-2. The agreement contains a clause describing the work covered by the contract and including therein "maintenance of . . . mechanical equipment." Pet. App. C-7.[1]

In September, 1989, the United Association filed a grievance alleging that Johnson was violating this "coverage" clause of the agreement by treating preventive maintenance tasks on mechanical equipment as work outside the agreement and by having the work done by employees outside the unit. The grievance was submitted by the parties to Arbitrator George Edward Larney. Arbitrator Larney resolved the grievance in favor of the United Association and ordered that affected members of the bargaining unit be made whole. Pet. App. C-85 to 86.

Given the nature of the Petitioners' attack on Arbitrator Larney's award, two points are worthy of emphasis:

First, it is uncontested that the United Association and the Council, on behalf of Johnson, reached agreement on the language of the "coverage" clause, the meaning of which is in dispute; that they executed a collective bar-

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[1] The clause in its entirety reads as follows:

> This Agreement covers the rate of pay, hours, and working conditions of journeymen and apprentices engaged in the installation, service, and maintenance of all plumbing and/or pipe fitting systems, pneumatic controls and mechanical equipment and component parts for all of the above which also includes fabrication, assembling, erection, installation, dismantling, replacement, repairing, reconditioning, adjusting, altering, calibrating, servicing of all plumbing and/or pipe fitting systems, pneumatic controls and/or mechanical equipment, and handling, unloading, distributing, reloading, tying-on, and hoisting of all piping materials, appurtenances and equipment used in connection to said plumbing or piping systems, pneumatic controls, and/or mechanical equipment, by any method, including all hangers and supports of every description and all other work included in the trade jurisdictional claims of the United Association.

Pet. App. C-7.

gaining agreement containing that clause; and that the agreement required the parties to submit contract interpretation disputes to binding arbitration. Pet. App. C-7 to 8. It is also undisputed that the parties submitted their dispute over the meaning of the "coverage" clause to binding arbitration before Arbitrator Larney.[2]

Second, notwithstanding Johnson's contentions here and in the courts below, Arbitrator Larney analyzed the language of the "coverage" clause and concluded that "there is absolutely no doubt that . . . the term maintenance must be construed as applying to all tasks/duties associated with maintenance work regardless of the range of complexity" and that "there is also no doubt that the way in which the language is structured, such maintenance work applies . . . to mechanical equipment." Pet. App. C-83 to 84. The Arbitrator's analysis of the negotiating history behind that clause left him "convinced that the Union did, in fact, recapture the preventive maintenance work . . . ." Pet. App. C-83.

B. Johnson filed suit under 29 U.S.C. § 185 to vacate Arbitrator Larney's award. The resulting unanimous Seventh Circuit opinion by Judge Donald P. Lay,[3] joined by Judges Easterbrook and Ripple, rejects Johnson's claims and directs enforcement of the award. Pet. App. A-1 to 11.[4] In its decision, the Seventh Circuit concluded that the basis for the district court's contrary decision—that there had been no "meeting of the minds" by the parties on the scope of the agreement's coverage clause and hence that there was no enforceable agreement in

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[2] Johnson initially argued to Arbitrator Larney that he had no jurisdiction to hear the dispute in view of a prior determination by Arbitrator Thomas J. Erbs. But Arbitrator Larney rejected that claim and Johnson did not assert it in either court below.

[3] Of the United States Court of Appeals for the Eighth Circuit, sitting by designation.

[4] In so doing, the Court of Appeals reversed the district court decision vacating the award. Pet. App. B-10.

that regard—is wrong both as a matter of fact and as a matter of law. Pet. App. A-8 to 10.

ARGUMENT

The decision of the Seventh Circuit is entirely sound; that decision raises no question of law of any substance, much less a question worthy of this Court's consideration.

1. The Court of Appeals found that "the arbitrator's analysis falls squarely within his authority to interpret the contract." Pet. App. A-8. That court rejected as a misreading of the Arbirtator's opinion the claim that the Arbitrator had found that the parties had not reached a meeting of the minds on the agreement's scope of coverage. Pet. App. A-8 to 9 and note 5. That being so, as the Seventh Circuit correctly held, the issue pressed by Johnson in that court and in its *certiorari* petition here—that an arbitrator cannot interpret an express contract provision and render an award if he finds that there had been no "meeting of the minds" between the parties—is simply *not* presented by this case *as a matter of fact*. And, as the Seventh Circuit also correctly held, citing and following *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 599 (1960), "[a]s long as the arbitrator's award is based on his interpretation of the contract, a court cannot disturb it." Pet. App. A-6.

2. The Court of Appeals further rejected the premise that a finding of no "meeting of the minds" on the meaning of the express "coverage" clause would preclude the Arbitrator from interpreting that clause. Pet. App. A-9. " 'When parties agree to a patently ambiguous term, they submit to have any dispute over it resolved by interpretation. That is what courts and arbitrators are *for* in contract cases. . . .' " *Id., quoting Colfax Envelope Corp. v. Local No. 458-3M, Chicago Graphic Communications Int'l Union*, 20 F.3d 750, 754 (7th Cir. 1994) (emphasis in original).

The Seventh Circuit's conclusion in the regard—which, as just explained, is *not* the holding on which its decision rests—is correct beyond question. This Court's labor arbitration jurisprudence rests on that sound premise that arbitrators are not helpless in the face of ambiguities and that their very office is to *resolve* disputes over ambiguous contract language. See, e.g., *Enterprise Wheel & Car Corp., supra.*

3. Johnson's claim that the Seventh Circuit decision is in conflict with a decision of this Court and with two court of appeals decision can not survive a moment's scrutiny.

Enterprise Wheel & Car Corp., supra, (Pet. 10), does not conflict with, but in fact supports, the decision below. The principal ruling of that case is that a federal court is to construe an ambiguity in an arbitrator's opinion *in favor* of enforcement of the award. 363 U.S. at 598. That ruling, relied on by the Seventh Circuit, provides the predicate for the Court of Appeals' refusal to accept Johnson's strained reading of the Arbitrator's award as one finding that there had been no "meeting of the minds" on coverage here. Pet. App. A-8 to 9.

IBEW Local 1395 v. NLRB, 797 F.2d 1027 (D.C. Cir. 1986) (Pet. 16), is quite simply inapposite. That case concerned an administrative law judge's observations as to whether union negotiators had clearly and unmistakably waived rights protected by Section 7 of the National Labor Relations Act, 29 U.S.C. § 157. Indeed, the District of Columbia Circuit in that case took pains to assure that its decision there not carry over into the arbitration context. 797 F.2d at 1035 n.8.

United Paperworkers Int'l Union v. Champion Int'l Corp., 908 F.2d 1252 (5th Cir. 1990) (Pet. 17), again does not even involve an arbitration award. And, the approach of that case is, in any event, consistent with the decision of the court below. The Fifth Circuit held there

that the parties' *objective manifestations of intent*, rather than their respective subjective understandings of the contract's meaning, should guide contract interpretation and enforcement. 908 F.2d at 1258-60.

There is, in short, neither dispute nor "general unease among circuits" (Pet. 17), on any point at issue in this case.

CONCLUSION

For the foregoing reasons, this case presents no issue worthy of this Court's plenary review. Accordingly, the petition should be denied.

Respectfully submitted,

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April 14, 1995